

## Confiscation and Restoration

THE EMANCIPATION OF four million slaves further complicated the social, economic, and political problems of a nation disrupted by war. Foremost among these problems—and urgently needing attention—was the alleviation of destitution among large numbers of freedmen. Hardly less important was the formulation of long-range plans for the economic welfare of the former slaves. Despite myriad proposals, programs, and alternatives, the freedmen's future was too often subject to the capricious expediency of those persons wielding power. Congress, nevertheless, by creating the Freedmen's Bureau, proposed to solve the problem of land and temporary rations. Unfortunately, the failure to provide appropriations forced all bureau activities to be self-supporting. Freedmen were to become self-sufficient by renting or purchasing land from the bureau. Out of the proceeds of their first crop they were to reimburse the government for any rations which they received.

Immediately following the cessation of hostilities, the War Department provided freedmen with surplus shovels, axes, and other tools of the disbanding armies. Based on recommendations of the Western Sanitary Commission and several assistant quartermasters, some military commanders turned over to the use of the bureau the horses and mules in excess of military needs. When the assistant commissioner for North Carolina requested

the use of some of the five thousand mules and horses in that state not needed by the military, Howard had no difficulty securing the animals from the military commander of the district.<sup>1</sup> Furthermore, General Grant instructed his military commanders to dismount their cavalry and sell most of the horses at public auction. Freedmen who had accumulated money during the war attended these auctions and "bid freely and bought largely."<sup>2</sup> One such auction in Georgia was attended by over ten thousand persons of whom at least two thirds were freedmen. They purchased mules and horses at prices ranging from \$150 to \$300.

Thomas Conway, the assistant commissioner for Louisiana, began his bureau activities by purchasing mules, cotton seed, and farm implements, which he used to work some of the plantations under his control. In this manner he provided wages for the able-bodied, and out of the proceeds he was able to care for the destitute.<sup>3</sup> Land distribution, however, because of jurisdictional disputes and divided authority, proved to be the most perplexing of the economic problems.

At the close of the war the Treasury Department and the military controlled the land available for distribution to the freedmen. President Johnson, in July, 1865, ordered Treasury officials and military commanders to transfer to the Freedmen's Bureau control of all abandoned and confiscated property as well

1. New York Times, June 6, 1865; "Report of Inspection of the Western Sanitary Commission," Registers and Letters Received, Bureau of Refugees, Freedmen and Abandoned Lands (BRFAL), in Record Group 105, National Archives, Microcopy 752, Roll 18, pp. 827-28; C. H. Tompkins to O. O. Howard, May 21, 1865, Roll 1, Register 1, p. 459; E. Whittlesey to O. O. Howard, June 26, 1865, Roll 18, p. 735; O. O. Howard to E. Whittlesey, June 27, 1865, Selected Series of Records (BRFAL), in RG 105, NA, Microcopy 742, Roll 1, p. 83.

2. Nation, 1 (September 21, 1865), 354; U. S. Grant to G. Meade, July 17, 1865, to L. Thomas, July 17, 1865, to P. Sheridan, July 18, 1865, in Ulysses S. Grant Papers, Library of Congress, Ser. 5, Vol. 109, pp. 50-51; Alruthus A. Taylor, *The Negro in South Carolina During the Reconstruction* (Washington: Association for the Study of Negro Life and History, 1924), 30.

3. T. Conway to O. O. Howard, July 3, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 14, pp. 534-35.

as all funds derived from the rental of these lands. Despite these orders, bureau officials were thwarted on many occasions in retrieving the land and the money. In Tennessee, General Clinton B. Fisk experienced difficulty convincing Treasury agents to turn over the property under their control.

When the Treasury Department finally transferred the property on August 14, 1865, most of the land had not been surveyed. Fisk reported that he had received 42,168 acres of land. However, he did not include the acreage of six plantations. Furthermore, the above figures are deceptive since only 9,881 acres were tillable. In Florida, although there was relatively little farm property confiscated, the Treasury Department held 162 pieces of town property in Pensacola and one tract of one hundred acres in Escambia County. The rental from this property was urgently needed if the bureau was to help the freedmen in Florida. However, the Treasury agent, J. W. Rick, did not transfer the property until April 5, 1866.<sup>4</sup> In Alabama there was no abandoned or confiscated land. However, the military had captured considerable property belonging to the Confederate government. The military commander transferred the property to the bureau but the Treasury agent repossessed the land. Since the land was captured Confederate property and was neither abandoned nor confiscated, the property belonged to the Treasury Department, not the Freedmen's Bureau. After some delay Howard succeeded in regaining possession of the property, which provided over \$62,000 in rent during the next year.<sup>5</sup>

General Rufus Saxton, in South Carolina and Georgia, complained that the military commanders restored nearly all abandoned property to the former owners. Colonel Orlando Brown

4. C. B. Fisk to O. O. Howard, July 5, 1865, *ibid.*, Microcopy 752, Roll 14, p. 995; June 30, 1865, p. 1265; Land Division (BRFAL), in RG 105, NA, Land Records, Boxes 7 and 10.

5. W. Swayne to O. O. Howard, September 16, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 17, p. 700; Elizabeth Bethel, "The Freedmen's Bureau in Alabama," *Journal of Southern History*, XIV (1948), 62.

claimed that most of the rebels in Virginia reclaimed their abandoned lands before he could organize the bureau.<sup>6</sup> However, the Treasury agents and direct tax commissioners for Fairfax, Prince William, and St. Elizabeth counties transferred to Brown over 15,000 acres which had been confiscated but not sold. In addition, General Benjamin Butler transferred approximately 65,000 acres which he had seized. By the end of July, 1865, Brown reported that he had received control of 81,541 acres. Freedmen occupied 33,516 of the acreage, while whites occupied only 5,562 acres.<sup>7</sup>

Shortly afterwards, Brown and several other military commanders recommended that all property in Virginia which had been condemned for confiscation be retained for the use of the bureau. Brown reported that the planters resisted bureau efforts by offering subsistence wages, refusing to rent land to freedmen, and adopting non-employment agreements for any former slave who voluntarily left his former master. Since he believed this reduced the freedmen to a condition worse than slavery, Brown literally pleaded for permission to expropriate all lands liable for confiscation under the law. He recommended that if his request for confiscation were denied, the government should make provisions for those freedmen wanting to go west to take advantage of the homestead law of 1862. In addition, he proposed that the bureau furnish transportation for those who could secure positions as domestic servants in the North.<sup>8</sup> Upon receipt of

6. R. Saxton to O. O. Howard, September 18, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 17, p. 215; D. Tillson to O. O. Howard, September 22, 1865, Roll 18, p. 111; O. Brown to O. O. Howard, May 19, 1865, Roll 13, pp. 798-99.

7. "Memoranda Relating to Abandoned and Confiscated lands, 1865-1868," Land Division (BRFAL), in RG 105, NA, Box 12, Land Reports, Box 11.

8. R. Cutts to H. W. Halleck, May 18, 1865, Registers and Letters Received, in RG 105, NA, Microcopy 752, Roll 13, p. 798; H. W. Halleck to E. M. Stanton, May 25, 1865, Roll 15, pp. 776-77; O. Brown to O. O. Howard, June 6, 1865, Roll 13, p. 893; June 15, 1865, p. 837; July 6, 1865, p. 915; July 28, 1865, pp. 865-66, and August 26, 1865, pp. 820-21; Land Division (BRFAL) in RG 105, NA, Land Reports, Box 11.

Brown's communication, Howard and Edwin Stanton, the secretary of war, took immediate action to declare a portion of the land in Amherst County, Virginia, vacant. In this manner the bureau gained control of an additional 5,300 acres. By assigning this land to the bureau, Stanton issued a warning to "those men who propose to nullify the Proclamation of the President and the laws of Congress."<sup>9</sup>

In Mississippi, Colonel Samuel Thomas revealed the resistance of whites to any land program benefiting the freedmen: "The whites know that if the negro is not allowed to acquire property or become a landholder he must return to plantation labor and work for wages that will barely support himself and family; and they feel this kind of slavery is better than none at all."<sup>10</sup> Consequently, since Thomas had an insufficient military force to protect the Negroes, he refrained from assigning them any land.

Thomas reported however that the Freedmen's Department relinquished control of the settlement at Davis Bend, where his officers converted one of the plantations into a home farm for the care of indigents. Transients performed the work on this farm. In September, the bureau land agent in Mississippi reported that the freedmen were cultivating all available land on Palmyra, Hurricane, and Banks, three of the plantations on Davis Bend which made up the freedmen's colony called Camp Hawley. Although the freedmen at Camp Hawley were growing a top grade crop, such was not the case on all plantations at Davis Bend. Brierfield, one of the plantations belonging to Jefferson Davis' brother Joseph, experienced considerable flooding. Con-

sequently, the freedmen's colony which the bureau attempted to establish there had to be abandoned.<sup>11</sup>

In order to assure that the bureau had sufficient funds to pay the expenses of the various colonies at Davis Bend, Colonel Thomas placed the gin and all its machinery under the command of a bureau agent who informed the freedmen that they would be allowed to gin their cotton "on as good terms as any other party across the river or elsewhere will gin for you."

The freedmen were willing to pay the cost of ginning their cotton but they resented the implications of the government actions. Fifty-six freedmen filed a formal petition with Colonel Thomas requesting that they be allowed to repair and operate the gin. They thanked the military for the protection it had afforded them and the right to till the soil they had been given. However they summarized their experiences that year in the following manner:

At the commencement of the present year, this plantation was, in compliance with an order of our Post Commander, deprived of horses, mules, oxen and farming utensils of every description, very much of which had been captured and brought into Union lines by many of the undersigned; in consequence of which deprivations, we were, of course, reduced to the necessity of buying everything necessary for farming, and having thus far succeeded in performing by far the most expensive and laborious part of our work, we are prepared to accomplish the ginning, pressing, weighing, marking, consigning, etc., in business-like order if allowed to do so.<sup>12</sup>

When Colonel Thomas refused their request the freedmen wrote a letter to the New Orleans *Tribune* explaining their position. They pointed out that they did not intend that their petition offend anyone.

11. J. Weber, "Report of property in hands of Bureau," September 6, 1865, Records of the Assistant Commissioner for the State of Mississippi (BRFAL), in RG 105, NA, Microcopy 826, Roll 34, pp. 35-36.

12. New Orleans *Tribune*, July 29, 1865.

9. O. O. Howard to O. Brown, June 19, 1865, Selected Series of Records (BRFAL), in RG 105, NA, Microcopy 742, Roll 1, p. 69.

10. S. Thomas to O. O. Howard, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 18, p. 46; July 31, 1865, p. 245, September 21, 1865, Roll 22, p. 52.



We are merely asking them to trust us in the management of our own affairs, as far as many of us have been intrusted with similar affairs of our late masters. . . . We wish every planter so engaged on this and other places to obtain the largest possible share of the produce of their labor, so that they may be encouraged to continue and others induced to commence. And further, we wish it distinctly understood that we do not claim the use of the above named machinery as a right, but desire it as a privilege to prevent the imposition of superfluous and unnecessary charges.<sup>13</sup>

Although the freedmen did not receive the right to operate the gin, the report on Davis Bend at the end of 1865 was extremely encouraging. The home farm, after paying all expenses, including wages and the cost of shelter, clothing, and rations for the old and infirm, showed a profit of over \$25,000. The freedmen who worked rent-free land on their own account for that year made a profit of over \$159,000. Although this was one of the most successful ventures by free Negro labor in 1865,<sup>14</sup> it did indicate that the freedmen, with minimal supervision and adequate protection, could provide for themselves.

Despite the success of the Davis Bend experiment, most freedmen found the lack of funds and the opposition of whites detrimental to their acquisition of land. In Louisiana, Chaplain Thomas Conway noted that Negro soldiers were saving money to buy land when they mustered out of service. Twenty such regiments in Louisiana had already saved sufficient money to

13. *Ibid.* The letter was dated July 11, 1865.

14. *Senate Executive Documents*, 39th Cong., 1st Sess., No. 2, p. 82; Vernon Lane Wharton Collection, Box 9, University of Southwestern Louisiana Archives, *House Executive Documents*, 39th Cong., 1st Sess., No. 70, p. 257; "Certificate of Negro Planters on Davis Bend," in RG 105, NA, Microcopy 752, Roll 20, p. 35; *Senate Executive Documents*, 39th Cong., 1st Sess., No. 27, pp. 30, 38. General Thomas reported that 181 companies or partnerships comprising 300 adults and 450 children received about five thousand acres of land, which they worked without interference, even from the bureau. They produced 12,000 bushels of corn worth \$12,000, vegetables, potatoes, and melons which they sold for \$38,000, and 1,736 bales of cotton which they sold for \$347,000. They paid out \$160,000 in expenses, paid their white partners \$60,000, and the expenditures were \$238,000, leaving a balance of \$159,000.

buy all the confiscated and abandoned lands in the state. One of these regiments had saved fifty thousand dollars to buy four or five of the largest plantations on the Mississippi. Because of the attitude of the whites, Conway feared for the safety of the freedmen in the interior of the state where there was little military protection. He therefore decided to assign land on both banks of the Mississippi, where the Negroes would be near transportation and commerce, and the military could better protect them.<sup>15</sup>

Colonel Charles Bentzoni and Major Phillip Weinmann proposed the creation of military colonies in the West. The colonies would be settled one company to a county. Each soldier would receive about fifty acres of land with the government retaining title to the land until his military term of seven years expired. The Negroes would work the land as independent farmers, and then after the harvest, they would drill and serve as soldiers. They would thus protect the western frontier and in the meantime become self-sufficient.<sup>16</sup>

Sergeant S. H. Smothers, a black soldier from Indiana serving with the 25th Army Corps in Texas, also proposed the creation of a military colony. However, unlike Bentzoni and Weinmann, who envisioned the government giving the land to the colonists in return for military service rendered, Smothers proposed that

15. T. Conway to E. R. S. Canby, "Final Report of the Bureau of Free Labor, Department of the Gulf," in RG 105, NA, Microcopy 752, Roll 20, pp. 358; T. Conway to O. O. Howard, August 22, 1865, Roll 14, p. 608; Oliver O. Howard, *Autobiography of Oliver Otis Howard* (New York: The Baker and Taylor Company, 1907), 188-89.

16. C. Bentzoni to O. O. Howard, July 7, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 13, p. 1024; Phillip Weinmann to O. O. Howard, June 13, 1865, Roll 18, pp. 599-601. Unlike Bentzoni and Weinmann, who proposed establishing the soldier colonies in the West, Chaplain H. H. Moore proposed to establish such military colonies in the South. He suggested that 50,000 to 100,000 acres of either public or confiscated land be appropriated to plant some eight hundred colonies of black soldiers. He pointed out that confiscated or abandoned improved land would be preferable for the experiment since a crop could be made the first year. H. H. Moore to Senator H. Wilson, March 29, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 16, pp. 854-55.

the colonists settle in the lower Rio Grande valley where they could purchase land at from twenty-five cents to one dollar per acre. He pointed out that "the high prices of land in the old states, the competition of labor, and the strong prejudice in the minds of the whites against us, make it very difficult for us to rise to wealth and respectability in those states. By settling in new portions of the country we will not have these difficulties to contend with." Smothers proposed also that blacks form a society called the First United States Colored Pioneer Association. The association would select the location for the colony and assist the colonists in purchasing the land. The association would also include a military organization to which all male members would belong. The sole purpose of the military organization would be the protection of the lives and property of the colonists.<sup>17</sup>

The inability or refusal of landowners to pay wages to their black laborers deprived many of the opportunity to purchase land. In response to the complaint that the planters had no money, the New Orleans *Tribune* suggested that they either find some or sell some of their land, since they had no right to withhold wages from the laborers for an entire season. The *Tribune* also pointed out that there was no country in the world where the owners made the laborers wait more than fifteen days for their money. If the workers had the means to provide for their families for a year in advance they could easily become independent farmers. The planters claimed that they had no money. Therefore if they could not afford to pay, they should cease to be planters and become workers.<sup>18</sup>

Colonel Bentzoni reported procrastination in accepting the Emancipation Proclamation by Arkansas slaveholders. He found it necessary as late as July, 1865, to issue orders stating that all

17. New Orleans *Tribune*, October 11, 1865, reprinted Smothers' letter dated September 23, 1865.

18. *Ibid.*, December 31, 1865.

slaves were freed as of January 1, 1863. He also proclaimed that anyone who retained his chattels after that time owed them back wages for two and one-half years. Unfortunately, the rapid demobilization of the military deprived the bureau in Arkansas of the necessary personnel to enforce Bentzoni's order. Brown in Virginia requested permission to use the power of the bureau to collect back wages for some 300,000 Negroes retained illegally in bondage and forced to work.<sup>19</sup> Had either of these two men succeeded, thousands of Negroes would have had sufficient funds to purchase the land they needed to support their families.

While General O. O. Howard was organizing the Freedmen's Bureau, President Johnson, on May 29, 1865, issued an amnesty proclamation pardoning most southerners and restoring their property rights. Concerned about the effect of this proclamation on the freedmen's land needs, Howard requested an opinion from the attorney general concerning his authority under the act creating the bureau. The attorney general replied that Howard "has authority, under the direction of the President, to set apart for the use of loyal refugees and freedmen the land in question; and he is required to assign to each male of that class of persons not more than forty acres of such land."<sup>20</sup> Thus, Howard could maintain control of all confiscated and abandoned lands actually needed for refugees and freedmen, subject, however, to presidential approval. The Freedmen's Bureau never controlled more than two-tenths of one percent of the land in the South and President Johnson's amnesty proclamation forced restoration of most of that land.<sup>21</sup>

19. "General Order No. 30," Helena, Arkansas, July 7, 1865, reprinted in New York *Times*, July 21, 1865; J. W. Sprague to O. O. Howard, September 21, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 17, pp. 240-41; O. Brown to O. O. Howard, July 27, 1865, Roll 13, pp. 878-79.

20. James Speed to E. M. Stanton, for transmittal to O. O. Howard, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 13, p. 57 (Emphasis in original); O. O. Howard to J. Speed, July 1, 1865, Microcopy 742, Roll 1, p. 89.

21. Paul Skeels Peirce, *The Freedmen's Bureau: A Chapter in the History of Reconstruction* (Iowa City: University of Iowa, 1904), 129.

Basing his actions on the attorney general's opinion, Howard decided to resist the efforts of southerners to reclaim any of three types of land which the bureau actually controlled: confiscated, abandoned, and captured Confederate property. Most of the captured Confederate property was not suitable for agricultural purposes. In those areas that had come under federal military control by 1863 the federal district courts had been reestablished and the direct tax commissioners had been appointed. Much of the land that was confiscated for non-payment of the direct tax had been condemned and sold by the courts to northern investors, except for such lands in Virginia that Stanton, at Brown's request, had reserved from sale. In the Sea Islands of South Carolina and Georgia the direct tax commissioners also held some confiscated lands. By far the largest class of lands was abandoned property. Much of this was either soon reclaimed by the former owners or restored by military commanders. Nevertheless, the bureau did acquire considerable aggregates of abandoned property. Brown reported from Virginia on June 7, 1865, that he had taken control of fifty-eight plantations totaling 16,675 acres, on which he built 669 huts as housing for 2,955 freedmen.<sup>22</sup>

In Louisiana and Mississippi, Treasury officials did not transfer land to the bureau until the end of July, 1865. By then they had already leased fifty-eight plantations in Mississippi and twenty-three in Louisiana to freedmen. Within a month after the land was turned over to the bureau in Louisiana, Conway, settled freedmen on nine additional plantations.<sup>23</sup>

22. *House Reports*, 40th Cong., 2nd Sess., No. 30, pp. 11-12; O. Brown to O. O. Howard, June 7, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 13, pp. 377-84; S. Thomas to O. O. Howard, June 28, 1865, Roll 1, Register 1, p. 460.

23. T. Conway to O. O. Howard, July 7, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 14, p. 576; August 13, 1865, *New York Times*, September 26, 1865, *Nation*, 1 (October 5, 1865), 42; *New Orleans Tribune*, November 14, 1865. The editor of the *Tribune* praised the New Orleans Freedmen's Aid Association for aiding freedmen in leasing fourteen plantations; *New Orleans Daily Picayune*, August 19, 1865.

On August 4, 1865, Conway reported that he had sixty-four plantations totaling 62,528 acres under his control. Only the 1,400-acre plantation of Richard Taylor in St. Charles Parish had actually been confiscated and title conveyed to the government by the district court. Treasury agent Benjamin Flanders had leased this plantation to an association of freedmen for one hundred dollars and one-eighth the proceeds of the crop. It appears that freedmen were farming on their own account approximately 10,000 acres of the 62,528 acres controlled by Conway.<sup>24</sup>

The Louisiana parishes of Tensas, Madison, and Carroll were controlled by the Treasury agent in Mississippi. Consequently, during 1865, the twenty-nine plantations confiscated in these parishes were carried on the Mississippi records. This has led to considerable confusion among historians concerning the actual amount of land held by the government in Louisiana. The twenty-nine plantations in these three parishes contained approximately 15,700 acres. During 1865 freedmen worked 3,372 acres of this land on their own account. Six associations planted 1,825 acres and fifty-one individual families worked 1,547 acres. Individual family holdings ranged from four to one hundred acres, whereas the association holdings ranged from eighty to eight hundred acres. One association, Eli Woodra and Company, leased eighty acres of land on which they produced a crop of thirty-five bales of cotton.<sup>25</sup>

In Warren County, Mississippi, fifteen families became self-supporting on small tracts which they leased from the government. John Smith leased forty acres on which he grew 10 bales of cotton and 250 bushels of corn. Ned Bohamon worked forty acres on which he grew a crop estimated at between 8 and 10

24. Land Division (BRFAL), in RG 105, NA, Land Reports, Box 8.

25. Land Report, September 6, 1865, Records of the Assistant Commissioner, Mississippi (BRFAL), in RG 105, NA, Microcopy 826, Roll 34, pp. 26-36; S. Thomas to A. Baird, Transfer of property, pp. 175-82; Land Division (BRFAL), in RG 105, NA, Land Reports, Box 8.



bales of cotton. Joseph Young and his family produced 10 bales on only thirty acres of land. A few, like John Winbush, apparently over-extended themselves and attempted to plant more land than their limited resources could bear. Winbush produced only 5 bales of cotton on fifty acres. Others, like one black who called himself King Herod, succeeded on a minimum amount of land. Herod planted only ten acres yet produced 3 bales of cotton.<sup>26</sup>

Although the time for planting staple crops was over when most bureau agents gained control of the land, Howard instructed them to make arrangements to divide the land and lease it to freedmen as rapidly as possible. In this manner freedmen would be able to start their vegetable gardens and thereby provide for themselves.

Conway, in Louisiana, seems to have developed a carefully thought-out plan for leasing land to the freedmen. On August 28, 1865, Conway issued Circular No. 10, instructing any freedman or refugee who wished to procure land for his own use to send an application to bureau headquarters prior to January 1, 1866. The applications were to contain the number in each family or association; the number of acres desired; and the amount of means commanded either by the individual or association in order to carry out the terms of the lease. Between September 5, 1865, and October 24, 1865, a total of 267 applications were made in Louisiana. Despite Conway's explicit instructions, of this total, 106 indicated that they had no rations to support themselves or tools to work the land. There were 1,054 men, 845 women, and 1,434 children involved in the 267 applications. Together they requested 23,919 acres of land.

Representative of the 161 applicants who could provide for themselves while preparing their first crop was Abraham Gordon, a freedman who had a wife and three children. He applied

for twenty-five acres in Jefferson Parish and indicated that he had two horses, one plow, one cart, and \$450.

One association, led by Miles Summerville and consisting of twenty-four other freedmen, twenty-five freedwomen, and thirty children, applied to rent 250 acres of government land in Terrebonne Parish. In order to assure success of the venture they had acquired thirteen horses with harness, five hundred barrels of corn, fifty hogs, six head of cattle, and six hundred dollars.<sup>27</sup>

While freedmen hopefully applied for land in Louisiana they received the support of the Negro press. The New Orleans *Tribune* praised General Howard's policy of dividing the land and pointed out that "the division of the lands is the only means by which a new, industrious, and loyal population may be made to settle in the South. . . . There is a large population of freedmen that has to settle on the divided lands." However, the *Tribune* also questioned the value of the title the settlers were to receive. "Shall they work under the threat of being expelled, from year to year, by returned rebels, taking what they call the 'mock oath' of amnesty?"<sup>28</sup> The fears of the *Tribune's* editor were well founded.

As southern agitation for property restoration increased, Howard devised a plan to retain most of the land under his control. He refused to restore any abandoned property unless the owner could prove non-abandonment. Howard considered the president's pardon as insufficient to force restoration of the land which Congress, by law, had reserved for the use of the bureau. However, through a series of executive orders beginning early in July, the president gradually forced restoration of much of the property. Howard apparently believed that the

27. "Register of Applications of Freedmen for Land" (BRFAL), in RG 105, NA, Louisiana Records; *House Executive Documents*, 39th Cong., 1st Sess., No. 70, pp. 19, 25.

28. New Orleans *Tribune*, August 31, 1865.

26. Land Report, September 6, 1865, Records of the Assistant Commissioner, Mississippi (BRFAL), in RG 105, NA, Microcopy 826, Roll 34, pp. 26-36.

immediate assignment of land to the freedmen would hinder presidential restoration. With this in mind he issued Circular No. 13 in July, 1865, instructing his agents not to restore any abandoned property but instead to assign this type of land to the freedmen as soon as possible.<sup>29</sup>

Some bureau agents acted in conformity with Howard's orders. Clinton B. Fisk in Tennessee set apart all abandoned plantations under his control and began making arrangements to sell the land to the former slaves in small lots of ten, twenty, thirty, or forty acres. Agents in Mississippi seized the property of former rebels worth more than \$20,000, while General Saxton in South Carolina and Georgia seized 312,014 acres as abandoned until ordered to cease by the military commander of the district. Saxton reported that the order suspending the seizure of abandoned lands came just as he had completed arrangements for taking possession of all the remaining abandoned lands which had not yet been seized by the Treasury Department. He protested: "The stopping of our operation in this direction coming at the same time with the decision that a former abandonment does not forfeit the land if the owner returns before such lands are seized by U.S. authorities, will effectually prevent this bureau from gaining possession of any more lands until this confiscation act shall be enforced." Failure to continue his operation would effectively nullify section four of the act creating the bureau.<sup>30</sup> In Arkansas, Assistant Commissioner John W. Sprague indi-

29. *House Reports*, 40th Cong., 2nd Sess., No. 30, pp. 11-12; *House Executive Documents*, 39th Cong., 1st Sess., No. 70, pp. 16-18. Immediately upon receipt of Circular No. 13, Conway, in Louisiana, issued his Circular No. 10, informing the freedmen to apply for land. The editor of the *Tribune* on September 5, 1865, stated that hundreds of freedmen were taking advantage of Circular No. 10. He praised the Negroes who in so short a time had accumulated sufficient capital to settle land.

30. *Senate Executive Documents*, 39th Cong., 1st Sess., No. 27, p. 139; C. B. Fisk to O. O. Howard, August 27, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 14, p. 1288; Andrew Johnson to O. O. Howard, August 24, 1865, Roll 16, p. 596; G. G. Meade to R. Saxton, September 30, 1865, Roll 17, p. 530; R. Saxton to O. O. Howard, September 9, 1865, p. 522.

Table 1  
COMPILATION OF LANDS HELD BY THE  
FREEDMEN'S BUREAU 1865-1868\*

	A	B	C
Virginia	75,600	49,800	9,336
North Carolina	36,500	10,800	2,540
South Carolina	435,000	181,600	74,669
Georgia		31,900	650
Alabama	3,400	3,200	None
Mississippi	43,500	22,600	None
Louisiana	78,200	47,900	3,040
Tennessee	65,600	40,900	21,582
Kentucky			None
Arkansas	106,100	66,100	27,717
Missouri		None	None
D.C. and Maryland	13,800	11,000	None
Florida	300	100	None
Texas	None	None	None
TOTALS	858,000	464,000	139,543

\*The figures in column A reflect the greatest approximate number of acres held by the Freedmen's Bureau in 1865; the figures in column B reflect the approximate number of acres held on January 31, 1866; and the figures in column C reflect the approximate number of acres held in August, 1868. (Note the combined report for South Carolina and Georgia in 1865, for Tennessee and Kentucky in 1865 and 1866, and for Arkansas and Missouri in 1865.)

This table was constructed from information found in the Land Division Records, RG 105, BRFAL, Box 12.



cated, at the end of August, 1865, that he held 18,736 acres of land in addition to town lots and buildings. Most of the smaller tracts of land he rented on one-eighth shares until January 1, 1866. One plantation of 6,184 acres, known as the Pillow place, was subdivided into tracts and leased to the freedmen for one-eighth of the proceeds of the crop. In order to provide for helpless freedmen he established a home farm on one plantation of 1,018 acres. He indicated that the home farm contained 134 houses, 1 saw mill, and 1 school house. Upon receipt of Circular No. 13, Sprague seized confiscable and abandoned property in Arkansas and increased his holdings to 106,140 acres. Apparently Sprague's sentiments concerning land for the freedmen mirrored General Howard's concern.<sup>31</sup>

Since Howard's policy was in direct contravention to President Johnson's program, he ordered Howard to draw up a new circular restoring the lands. In compliance, Howard ordered restoration of abandoned lands to those southerners who secured a presidential pardon. However, because the order also contained provisions for retaining all confiscated lands, the president ordered it recalled. Johnson rewrote the restoration order to read: "Land will not be regarded as confiscated until it has been condemned and sold by decree of the United States Court for the district in which the property may be found, and the title thereto thus vested in the United States."<sup>32</sup> This new circular made the possession of land so uncertain that many bureau agents discontinued their policy of assigning land to the freedmen. Fortunately, the order instructed bureau agents to protect the rights of the freedmen to the crop which they had planted.<sup>33</sup>

31. Land Division (BRFAL), in RG 105, NA, Land Reports, Box 7.

32. George R. Bentley, *A History of the Freedmen's Bureau* (Philadelphia: University of Pennsylvania Press, 1955), 92; *New York Times*, September 6, 1865, September 14, 1865, December 20, 1865; Howard, *Autobiography*, 232, 235; *New Orleans Times*, September 23, 1865; *New Orleans Tribune*, September 26, 1865.

33. *House Executive Documents*, 39th Cong., 1st Sess., No. 70, pp. 21-22; *House Reports*, 40th Cong., 2nd Sess., No. 30, p. 13.

Assistant Commissioner Sprague in Arkansas reported at the end of October that he had restored a total of 6,434 acres of land, including the Pillow place, which had been divided previously among the freedmen. In addition to restoring the property, Sprague allowed the owner to collect the one-eighth lease, which the freedmen had contracted to pay for the use of the land. By the end of December, 1865, Sprague reported that he had restored 39,400 acres but that he had also seized an additional 1,900 acres. He therefore held 68,641 acres as of January 1, 1866.<sup>34</sup>

Assistant Commissioner Eliphalet Whittlesey in North Carolina reported that although he had restored 38,735.5 acres of land under Circular No. 15 he still retained 61,663.5 acres as of October 31, 1865. He also indicated that much of the land that had been technically restored was still in the possession of the bureau since it was leased to the freedmen. Most of the owners preferred not to be responsible for the bureau's share of the crop and therefore only assumed informal possession of the dwellings on their land. By December 31, 1865, when most of the leases expired, the bureau in North Carolina controlled only 11,397 acres.<sup>35</sup> However, the bureau continued to lease to freedmen what land it actually controlled. One freedman, George Brown, on January 13, 1866, leased 750 acres, of which only 70 acres were cleared. Under the terms of the lease Brown was to pay, on or before January 1, 1867, a rent of one-fourth the production of any crop, turpentine, or tar from the plantation. All large leases in North Carolina during 1866 were for one-fourth of any products derived from the tract leased. Isaac Burnett leased 800 acres of turpentine land; Josiah Collins leased 125 acres of turpentine land; John Ventes leased 10 acres of farm land. Since the

34. J. W. Sprague, Land Report for Arkansas and Missouri, November, 1865, Land Division (BRFAL), in RG 105, NA, Land Reports, Box 7.

35. E. Whittlesey, Land Report for North Carolina, October 31, 1865, January 31, 1866, *ibid.*

bureau controlled little cleared land the farm leases were small. On one plantation there was only 61 acres of tillable land. Therefore, bureau agents leased the land in one-acre tracts to sixty-one families. The bureau agent in the Beaufort district of North Carolina reported that in March, 1866, he restored the Washington Thomas place of 10 acres. "However, Freedmen living on the place have leases to January 1, 1867, rent free with permission to remove their houses." He also indicated that 105 freedmen living in 22 shanties on the ten-acre Josiah Bell place were supporting themselves. On Roanoke Island the bureau controlled 1,114 acres, of which 890 were cultivated. However, Captain Frank A. Seely, the bureau agent for the island, reported in April, 1866, that 3,000 refugees and freedmen were scattered about on different tracts of land having about one acre each. Evidently, although the bureau only controlled a small portion of the island, the freedmen acted on the assumption that the entire island was under bureau control.

By the end of April, 1866, Whittlesey in North Carolina indicated that there were only 3,696 acres in the possession of the bureau, with 1,356 of that under cultivation. Fortunately, the freedmen who held rent-free leases on the land restored between January 30, 1866, and April 30, 1866, were protected in their right to use the land until January 1, 1867.<sup>36</sup>

Assistant commissioners in other states also grappled with the problem of how to obey Circular No. 15 as ordered by President Johnson and still provide justice to the freedmen who believed the land had been promised to them. Saxton in South Carolina, Brown in Virginia, Thomas in Mississippi, and Conway in Louisiana all reported that if they were forced to restore land

36. F. A. Seely to E. Whittlesey, October 31, 1865, Records of the Assistant Commissioner for the State of North Carolina (BRFAL), in RG 105, NA, Microcopy 843, Roll 36, pp. 29-39; April 5, 1866, pp. 89-93; F. A. Seely to C. Brown, Lease, January 13, 1866, p. 299; F. A. Seely to J. Smith, Lease, January 5, 1866, p. 293; F. A. Seely to J. Ventes, Lease, January 10, 1866, p. 295; E. Whittlesey to O. O. Howard, Report for month ending April 30, 1866, pp. 102-103.

according to the terms of the new restoration order, the freedmen would be forced either to leave the South or to become wage slaves on the land they had always worked. Brown estimated that at least twenty thousand freedmen in southeastern Virginia would be displaced.<sup>37</sup> Much of the condemned land in Virginia which Stanton had reserved for the use of the bureau was now subject to restoration.<sup>38</sup> Since some of the owners had not yet received their pardons, Brown, Judge John C. Underwood, and the tax commissioner for Virginia recommended that the order suspending sale of condemned land be revoked. In this manner, at least some of the freedmen could secure a small homestead before the owners could be pardoned. Ironically, if instead of suspending the sale of these properties in June, Stanton had ordered the title transferred to the Freedmen's Bureau, there could have been no restoration. It is quite possible that Johnson would have approved such action at that time since he had not yet undergone the metamorphosis from enemy of the planter aristocracy to defender of their property rights.<sup>39</sup>

As restoration proceeded, Howard and certain of his agents continued their resistance. Howard established the policy that all restorations must be made by him in order to avoid a conflict of authority. Colonel Fullerton, who favored restoration and was a confidant of the president, attempted to circumvent Howard

37. Bentley, *Freedmen's Bureau*, 97; G. Whipple to O. O. Howard, November 15, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 19, p. 243.

38. J. C. Underwood to O. O. Howard, October 12, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 24, p. 924. Judge Underwood stated that at the September term of the U.S. District Court of Virginia, \$2 million of condemned property was returned to former rebels.

39. *Ibid.*, J. C. Underwood to O. O. Howard, October 7, 1865, Roll 24, p. 926; October 12, 1865, p. 924; J. Havighurst to O. O. Howard, October 7, 1865, p. 930; *Senate Executive Documents*, 39th Cong., 1st Sess., No. 27, p. 165. During the war Judge Underwood, in *U.S. vs. the Rights Title and Interest of Hugh Latham*, ruled that the Constitution permitted the government to take the life of a traitor. Therefore it could take his property with full title. *New York Times*, November 22, 1863.

by ordering sub-agents of the bureau to restore land directly without first seeking Howard's approval. Howard countermanded Fullerton's orders and informed the assistant commissioners that under no circumstances were they to break a lease with the freedmen.<sup>40</sup> One sub-agent in Virginia interpreted Howard's instructions literally and as soon as he learned that certain plantations were to be restored he immediately leased them to freedmen for a long period. In this manner he succeeded in delaying restoration legally since the owner could not be given possession of land which was under lease.<sup>41</sup>

Apparently President Johnson anticipated Howard's delaying tactic. On September 7, 1865, he issued an executive order suspending his previous instructions to the Treasury to turn over funds collected from abandoned and confiscated lands to the bureau. In this manner he could weaken the efforts of the bureau, and its chief, by simply depriving them of financial support. Some Treasury agents who agreed with the president interpreted the new executive order as giving them authority to collect the rents from the lands in question.<sup>42</sup>

Secretary of the Treasury Hugh McCulloch impounded fifty thousand dollars derived from the sale of cotton raised by freedmen under General Saxton's direction. Saxton argued that the cotton was raised by old men, women, and children and sent to New York to be sold for their benefit. Therefore, the money "belongs to the freedmen, and should be restored to me, to be expended for their benefit." Secretary McCulloch cited Johnson's executive order of September 7 forbidding further transfer of such funds to the Freedmen's Bureau. Saxton ap-

pealed the decision but McCulloch was adamant. He pointed out that the entire proceeds could not belong to the laborers unless they also owned the soil. Since the lands were abandoned the government took possession of it as "the property of public enemies." Therefore, the products belonged to the government, not the freedmen. It appears that the Treasury finally allowed ten thousand dollars for the value of the labor and retained forty thousand as profit.<sup>43</sup>

Howard realized that his control of confiscated and abandoned land was entirely dependent on the president. Consequently he instructed Saxton to discontinue renting and selling land in the South Carolina parishes of St. Helena and St. Luke. He preferred to permit the tax commissioners to sell the land since they could actually convey title whereas the bureau could not. By November, 1865, approximately nine hundred freedmen had purchased small homesteads from the tax commissioners; many others deposited their money in the Freedmen's Savings Bank to pay for the parcels they were cultivating while waiting for their lands to be surveyed and offered at auction. The commissioner of the Internal Revenue, who favored the president's restoration policy, issued instructions halting the sale of lots in Beaufort, South Carolina. Tax Commissioner William Brisbane enlisted the support of Senator James Doolittle in an effort to continue the sale of lots of not more than twenty acres to freedmen. Brisbane proposed that the government sell the land which it had appropriated and recompense the original proprietors.<sup>44</sup>

When Congress finally convened in December, 1865, friends of the freedmen requested congressional action to halt property

43. R. Saxton to O. O. Howard, November 23, 1865, *ibid.*, Roll 24, p. 24; H. McCulloch to O. O. Howard, December 16, 1865, pp. 792-93; January 6, 1866, pp. 835-38.

44. O. O. Howard to R. Saxton, September 6, 1865, Selected Series of Records (BRFAL) in RG 105, NA, Microcopy 742, Roll 1, p. 167; W. Brisbane to J. R. Doolittle, November 28, 1865, in James R. Doolittle Papers, Library of Congress.

40. N. M. Stinson to C. Woodhull, October 10, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 17, p. 903; O. O. Howard to S. Thomas, Selected Series of Records (BRFAL), in RG 105, NA, Microcopy 742, Roll 1, p. 236.

41. O. O. Howard to O. Brown, October 25, 1865, Registers and Letters Received (BRFAL), in RG 105, NA, Microcopy 752, Roll 24, p. 59.

42. "Executive Order of September 7, 1865," *ibid.*, Roll 21, p. 415; C. B. Fisk to O. O. Howard, p. 418.



restoration. Congress was apparently more concerned with the disposition of abandoned lands than with confiscated land. Unlike the confiscation act of 1862 which limited the term of confiscation to the life of the offender, the act of July, 1864, provided for the sale of abandoned lands for the benefit of freedmen. The act defined abandoned lands as any land from which the owner was voluntarily absent while aiding the Confederacy in any manner.<sup>45</sup> Congress had intended that the seizure of abandoned lands be permanent and therefore issued a resolution in December, 1865, requesting information concerning lands restored under President Johnson's restoration policy. Howard reported that the bureau held a number of pieces of property which had been seized and condemned under the act of July 17, 1864, and allotted to freedmen. No property of this type had been restored. However, many abandoned plantations occupied by freedmen, but not allotted to them, had been restored to former owners. Howard also reported that many plantations included in General Sherman's Special Field Order No. 15 were occupied by freedmen as homesteads. None of these had been restored to former owners.<sup>46</sup>

Although Howard and some bureau agents continued to resist restoration, the bureau restored approximately 393,000 acres by January 31, 1866. However, bureau agents still retained approximately 464,000 acres. In response to a House resolution of March 5, 1866, concerning lands restored, Howard indicated on April 21, 1866, that the bureau had restored 15,452 acres confiscated under the act of July, 1862. Concerning lands seized as abandoned under the act of July, 1864, he indicated that the bureau restored 14,652 acres which had been allotted to freedmen. Therefore, by April 21, 1866, the bureau had restored approximately 430,104 acres of land to former owners or their

45. U.S. *Statutes at Large*, XII, 375-78.

46. New York *Times*, January 9, 1866.

agents. Nevertheless, the bureau still retained possession of well over 427,000 acres of confiscated and abandoned land. As late as August, 1868, the bureau retained possession of approximately 140,000 acres of confiscated or abandoned land.<sup>47</sup> Unfortunately, these figures are quite deceptive in that they represent all land held, rather than just tillable land. For instance, of the 42,168 acres which Treasury agents in Tennessee turned over to the bureau in August, 1865, only 9,881 acres had been cleared and were considered tillable. The remaining 32,287 acres were of no value as farmland since no freedman would lease or purchase the land for farming without assurance that the land, once cleared and made productive, would be his. These same conditions existed in the other southern states.<sup>48</sup> Therefore, without the power to convey title to the land, and in the face of the president's restoration order, the prospects of securing land for the freedmen were not bright. The only area where the bureau appeared to have some chance of acquiring title to abandoned land was in South Carolina, Georgia, and northern Florida where General Sherman had reserved for the exclusive use of the freedmen a thirty-mile-wide belt of land along the coast from Charleston, South Carolina, to the St. Johns River in Florida.

47. "Memoranda relating to abandoned and confiscated land, 1865-1868," Land Division (BRFAL), in RG 105, NA, Box 12.

48. Land Division (BRFAL), in RG 105, NA, Land Reports, Box 10, Tennessee; Box 7, Florida and Alabama; Box 8, Louisiana; Box 12, Virginia.